

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
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of	:	
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<b>RAC FOR WOMEN, INC.</b>	:	<b>DETERMINATION</b>
	:	<b>DTA NO. 819698</b>
for Redetermination of a Deficiency or for Refund of	:	
Corporation Franchise Tax under Article 9-A of the Tax	:	
Law and Personal Income Tax under Article 22 of the Tax	:	
Law for the Year 2001.	:	

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Petitioner, RAC for Women, Inc., 21 Goodway Drive, Rochester, New York 14623, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law and personal income tax under Article 22 of the Tax Law for the year 2001.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 77 Broadway, Buffalo, New York, on July 27, 2004 at 9:15 A.M. Petitioner appeared by Dolce, Dolce & Priore, CPA's (Anthony J. Priore, CPA). The Division of Taxation appeared by Mark F. Volk, Esq. (Greg Cerkiewicz).

Since neither party herein elected to reserve time to file a post-hearing brief, the three-month period for the issuance of this determination began as of the date the hearing was held.

***ISSUE***

Whether petitioner has established that its failure to timely file its 2001 corporation franchise tax return, failure to timely pay the corporation franchise tax due for 2001 and failure to timely file a 2001 S-corporation information return under Article 22 of the Tax Law was due

to reasonable cause and not willful neglect, thus permitting the penalties imposed for such failures to be waived or abated.

### ***FINDINGS OF FACT***

1. Petitioner herein, RAC for Women, Inc., was incorporated in New York on January 7, 2000. During the year at issue petitioner had a total of five shareholders and was a Federal S corporation which elected to be treated as a New York S corporation. Petitioner's primary business activity involved the operation of a health and fitness club for women located in Rochester, New York.

2. On or about March 5, 2001, petitioner filed with the Division of Taxation ("Division") a request for a six-month extension, from March 15, 2001 to September 15, 2001, to file its initial New York S Corporation Franchise Tax Return for the period January 7, 2000 to December 31, 2000. On its request for a six-month extension petitioner estimated that its total franchise tax liability for 2000 was \$225.00, and it included a payment of \$225.00 with the request for an extension. On or about April 15, 2001, petitioner filed its New York S Corporation Franchise Tax Return for the period January 7, 2000 to December 31, 2000 reporting a fixed dollar minimum tax due of \$225.00, which amount was paid in full pursuant to the \$225.00 payment made with the request for an extension.

3. On or before March 15, 2002, petitioner submitted to the Division a request for a six-month extension to file its New York S Corporation Franchise Tax Return for 2001. On this request petitioner estimated that its total franchise tax due for 2001 was \$100.00, and it remitted payment of this amount with the request for an extension. On June 20, 2002, petitioner filed its 2001 New York franchise tax return, together with payment of the \$7,709.00 balance due shown on the return. The balance due of \$7,709.00 included the following items:

ITEM	AMOUNT
Tax on entire net income base	\$5,235.00
First installment of estimated tax for 2002	1,309.00
Total	6,544.00
Less payment made with extension request	-100.00
Balance	6,444.00
Penalty for underpayment of estimated tax	154.00
Interest	84.00
Late filing and late payment penalties	1,027.00
Balance due	\$7,709.00

4. The Division, pursuant to Tax Law § 211(1) and regulation 20 NYCRR 6-4.4(a), determined that petitioner's request for a six-month extension to file its 2001 New York S Corporation Franchise Tax Return was invalid since the \$100.00 estimated liability shown on the extension request was not equal to either 90% of its 2001 tax liability (90% of \$5,235.00) or 100% of the previous year's liability (\$225.00). Since the extension request for 2001 was deemed invalid, the Division, on July 15, 2002, issued a Notice and Demand for Payment of Tax Due ("Notice") to petitioner asserting that penalties were due pursuant to Tax Law § 1085(a)(1), (2) and (c)<sup>1</sup> for the late filing of its 2001 corporation franchise tax return, the late payment of its corporation franchise tax for 2001 and underpayment of estimated corporation franchise tax for 2001, respectively. The Notice also asserted that a penalty under Tax Law § 685(h)(2)<sup>2</sup> was due for petitioner's failure to timely file an information return for an electing S-corporation.

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<sup>1</sup> Petitioner does not contest the assertion of the Tax Law § 1085(c) penalty for its failure to properly pay estimated corporation franchise tax for 2001.

<sup>2</sup> This is commonly known as the "shareholder penalty" since the penalty is the product of \$50.00 multiplied by the number of shareholders of the S-corporation, in this case five, multiplied by the number of months the information return is late, here three months.

5. On July 1, 2002, petitioner filed an amended corporation franchise tax return for 2001 claiming that it had overpaid its liability for the 2001 tax year by \$185.00. After a review of the amended return, the Division recomputed the amount due for 2001 in the following manner:

<b>ITEM</b>	<b>AMOUNT</b>
Estimated tax penalty	\$154.00
Interest	87.27
Late filing penalty	686.76
Late payment penalty	76.29
Shareholder penalty	750.00
Total	1,754.32
Less penalty and interest paid on original return and overpayment on amended return	-1,413.00
Amount due	\$341.32

6. Petitioner's tax returns for years subsequent to the year at issue have been filed in a timely fashion.

7. Petitioner's representative, Mr. Priore, a certified public accountant, prepared the corporation franchise tax returns filed by petitioner for the 2000 and 2001 tax years, as well as the requests for extension of time to file for both years. The tax preparation software utilized by Mr. Priore's firm for the 2001 tax year did not go back to the information and amounts shown on the client's tax return for the previous tax year, and when extension requests were prepared for 2001, the software program automatically defaulted to the \$100.00 fixed dollar minimum tax when estimating the tax due for the current year. Thus, when petitioner's request for an extension to file its 2001 corporation franchise tax return was prepared, the estimated liability was shown as \$100.00, instead of the \$225.00 tax liability which was reported on the 2000 tax return.

***SUMMARY OF PETITIONER'S POSITION***

8. Petitioner argues that had it paid \$225.00 with the request for an extension, instead of the \$100.00 minimum amount, the request would have been accepted and no late filing penalties would have been imposed. Petitioner had sufficient funds to pay the extra \$125.00 needed to make the extension request for 2001 valid and petitioner maintains that it is illogical that it would subject itself to late filing penalties totaling \$1,513.05 to save a \$125.00 payment on the extension request. Petitioner asserts that its failure to properly estimate the tax liability on the extension request was due to reasonable cause, a tax preparation software problem, and was not the result of willful neglect of the Tax Law. Mr. Priore submitted documentary evidence to show that this exact same problem occurred with respect to the 2001 corporation franchise tax return filed by another client of his and that the Division canceled the late filing penalties when provided with the same explanation presented herein.

***CONCLUSIONS OF LAW***

A. In the instant matter, there is no dispute that petitioner filed a timely request for an extension of time to file its 2001 corporation franchise tax return. It is equally clear that by paying \$100.00 instead of \$225.00 with its 2001 extension request, petitioner did not properly estimate its tax liability pursuant to Tax Law § 211(1) and § 213(2)(a) and regulations 20 NYCRR 6-4.4(a) and 7-1.3. Therefore, the Division, in accordance with 20 NYCRR 6-4.4(a), properly concluded that the request for an extension of time was invalid and the return and payment mailed on June 20, 2002 were late.

B. As relevant to this proceeding, Tax Law § 1085(a)(1) and § 685(h)(2) provide for the imposition of penalties for the failure to file a timely return, while Tax Law § 1085(a)(2) imposes a penalty for the failure to pay the tax due on or before the prescribed due date. All

three penalties are to be imposed unless it is shown that the respective failures were due to reasonable cause and not the result of willful neglect. (Tax Law § 1085[a][1], [2]; § 685[h][2].) Regulation 20 NYCRR 2392.1 sets forth various provisions relating to the existence of reasonable cause for purposes of not imposing the penalties at issue herein and, as pertinent to this matter, 20 NYCRR 2392.1(d)(5) provides “[A]ny other ground for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be reasonable cause.”

C. After carefully considering all of the facts, I conclude that petitioner has established that its failure to timely file returns and pay the tax due for the 2001 tax year was due to reasonable cause and not willful neglect of the Tax Law. Petitioner made a good faith effort to comply with the Tax Law, and but for a tax software problem which inadvertently estimated its 2001 corporation franchise tax liability to be \$100.00 instead of \$225.00, its extension request would have been valid and no late filing and late payment penalties would have been imposed. It is also noted that petitioner’s filing history for all years except the year in dispute is unblemished.

D. The petition of RAC for Women, Inc. is granted to the extent that the penalties assessed pursuant to Tax Law § 1085(a)(1), (2) and § 685(h)(2) are canceled and the Notice and Demand for Payment of Tax Due dated July 15, 2002 is, except as so modified herein, in all other respects sustained.

DATED: Troy, New York  
October 14, 2004

/s/ James Hoefer  
PRESIDING OFFICER